

L-37-249
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April 28, 1937

Mr. Dailey

Mr. Schreiber

Creditability of service with the Sayre and Southwestern Railroad Company (Sayre Lumber Company) under the Railroad Retirement Act of 1935.

Reference is made to Mr. Clark's memorandum of January 12, 1937, relating to the application of Elmer E. Parker - A-51541, inquiring whether service performed for the Sayre and Southwestern Railroad is creditable toward annuities under the Railroad Retirement Act of 1935.

The Sayre & Southwestern Railroad Company (hereinafter called the Railroad) was a railroad owned and operated by the Sayre Lumber Company (hereinafter called the Company). The Company was engaged in the logging and lumber business and in connection therewith operated the Railroad. The Railroad operated about sixteen miles between Bluff City, Arkansas, and Sayre, Arkansas, and, at the latter point, had an interchange connection with the St. Louis, Iron Mountain, and Southern Railway, at which point the lumber shipped by the Sayre Lumber Company was delivered to the latter carrier for shipment to other points.

The evidence available indicates that neither the Company nor the Railroad ever filed any tariffs, annual reports, concurrences, or powers of attorney with the Interstate Commerce Commission. The only documents filed with the Interstate Commerce Commission are two circulars filed by the Railroad in 1903 and 1904. The 1903 circular stated that the Railroad's business was private, and that it also handled freight under special contract. The 1904 circular stated that the Railroad was abandoned and not in operation.

The Company used the Railroad for transportation of its commodities only and did not transport commodities for the public generally, although it did transport some freight under special contract.

I am, therefore, of the opinion that neither the Sayre Lumber Company nor the Sayre and Southwestern Railroad Company were common carriers by railroad, subject to the Interstate Commerce Act; that they were not "carriers" within the meaning of the Railroad Retirement Act; and that service rendered to either company is not creditable toward annuities under the Act.

Copies to: Mr. Latimer
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